

PATRICIA A. MCKENNA, Senior Attorney
SCOTT BAUER, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044
(202) 514-4133

SUSAN STEELE
Assistant United States Attorney
U.S. Attorney's Office
District of New Jersey
Peter Rodino Federal Building
970 Broad Street, Suite 700
Newark, N.J. 07102
(973) 645-2920

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
BURLINGTON RESINS, INC.,)	
doing business as)	
COLORITE SPECIALTY RESINS, INC.,)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. Plaintiff brings this action under the Clean Air Act ("CAA"), 42 U.S.C. § 7401, *et seq.*, the Clean Water Act ("CWA"), 33 U.S.C. § 1251, *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11001, *et seq.*, and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, *et seq.*, to obtain injunctive relief and/or civil penalties for violations of each of these statutes, as well as their implementing permits and regulations.

JURISDICTION, VENUE AND AUTHORITY

2. Jurisdiction is vested in this Court pursuant to: Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Section 3008(a)(1) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (g); Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); Section 17 of TSCA, 15 U.S.C. § 2616; and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), 42 U.S.C. § 7413(b), 42 U.S.C. § 6928(a) and (g), 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), 15 U.S.C. § 2616(a)(2), and 42 U.S.C. § 11045(b)(3) because the violations alleged occurred within this district, at a facility located in Burlington, New Jersey.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the CAA, 42 U.S.C. § 7605, Section 309 of the CWA, 33 U.S.C. § 1319, Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), Section 17 of TSCA, 15 U.S.C. § 2616, and 28 U.S.C. §§ 516 and 519.

NOTICE

5. Notice of the commencement of this action has been given to the New Jersey Department of Environmental Protection ("NJDEP"), pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANT

6. Defendant Burlington Resins, Inc., doing business as Colorite Specialty Resins, Inc. ("Colorite") is, and at all times relevant to this action has been, a corporation organized and existing under the laws of the State of Delaware and doing business in the State of New Jersey.

7. This action pertains to Colorite's polyvinyl chloride ("PVC") manufacturing plant located at 1800 Beverly Road, Burlington, New Jersey ("the Facility"). At all times relevant to this action, Colorite has owned and operated the Facility.

8. Colorite is, and at all times relevant to this action has been, a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 502(5) of the CWA, 33 U.S.C. § 1362(5), Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Section 329(7) of EPCRA, 42 U.S.C. § 11047(7), and 40 C.F.R. § 761.

9. Colorite, at all times relevant to this action, was and continues to be an "owner" and/or "operator" of the Facility, within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

10. Colorite, at all times relevant to this action, has operated and continues to operate at the Facility several "stationary sources" of air emissions that are subject to the National Emission Standards for Hazardous Air Pollutants ("NESHAP") found at 42 U.S.C. Part 61,

subparts F and V.

11. Colorite, at all times relevant to this action, has discharged and continues to discharge “pollutants” from the Facility through several “point sources” into “navigable waters,” as each of those terms is defined in Section 502 of the CWA, 33 U.S.C. § 1362.

12. Colorite, at all times relevant to this action, has been and continues to be an owner or operator of a non-transportation-related on-shore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distilling, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in 40 C.F.R. Part 10, into or upon navigable waters of the United States or adjoining shorelines, as that term is defined in 40 C.F.R. § 112.26.

13. Colorite, at all times relevant to this action, has been and continues to be an “owner” and/or “operator” of the Facility, within the meaning of 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).

14. The Facility, at all times relevant to this action, has been and continues to be a “hazardous waste management facility” that has and continues to generate “hazardous waste” as those terms are defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)), and that has and continues to generate “solid wastes” as that term is defined in 40 C.F.R. § 261.2 (1993)(N.J.A.C. 7:26G-5.1(a)).

15. Colorite, at all times relevant to this action, owns and uses PCB Transformers, as defined in 40 C.F.R. 761.3, and generates PCB waste, as defined in 40 C.F.R. 761.3.

16. Colorite, at all times relevant to this action, operated and continues to operate a facility as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

17. Colorite, at all times relevant to this action, manufactures, processes or otherwise uses vinyl acetate, a toxic chemical listed at 40 C.F.R. § 372.65, in excess of applicable thresholds.

18. Pursuant to 40 C.F.R. § 372.22(a), Colorite, at all times relevant to this action, employs or employed more than ten full-time employees.

19. Pursuant to 40 C.F.R. § 372.22(b), the Facility, at all times relevant to this action, is and has been classified as Standard Industrial Classification Code 2821.

STATUTORY AND REGULATORY BACKGROUND

Clean Air Act

20. Section 112 of the CAA, 42 U.S.C. § 7412, authorized the Administrator of EPA (“Administrator”) to publish a list of hazardous air pollutants for which he intends to establish an emission standard, and to promulgate emission standards and work practice standards to control emission of such pollutants. These standards are known as National Emission Standards for Hazardous Air Pollutants (“NESHAP”).

21. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), designates vinyl chloride as a hazardous air pollutant.

22. Pursuant to § 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated regulations establishing emission standards for vinyl chloride at 40 C.F.R. Part 61, Subpart F (§§ 61.60 to 61.71) (the “Vinyl Chloride NESHAP”).

23. The Vinyl Chloride NESHAP applies to the Facility, where vinyl chloride is stored, used, processed and released.

24. Title V of the CAA, 42 U.S.C. §§ 7661 through 7661f, establishes an operating

permit program for certain sources, including "major sources." The State of New Jersey's Title V permit program was granted full approval by EPA on November 30, 2001. The State of New Jersey has issued an air pollution control permit, Program Interest Number 45940, Permit Activity Number BOP05001 ("Title V Permit"), to the Facility. The Title V Permit incorporates federal and state requirements, which include compliance with the Vinyl Chloride NESHAP.

25. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to bring a civil action if the Administrator finds that any person is in violation of, *inter alia*, any regulation promulgated under Section 112 of the CAA, 42 U.S.C. § 7412.

26. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Court to enjoin a violation, to require compliance, and to assess a civil penalty for each violation.

27. Pursuant to § 502(e) of the CAA, EPA maintains its authority to enforce permits issued by a State.

Clean Water Act

28. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits all discharges of pollutants into waters of the United States except as allowed by specified sections of the Act. The only exception pertinent to this action is Section 402 of the CWA, 33 U.S.C. § 1342, which provides for EPA, and States with EPA-approved programs, to issue National Pollutant Discharge Elimination System ("NPDES") permits allowing limited discharges of pollutants under specified conditions.

29. EPA has approved New Jersey's program for issuance of NPDES permits. Under that program, New Jersey issued permit No. NJ0004391 to Colorite for the Facility on December 31, 2002. That Permit became effective on March 1, 2003. It authorizes Colorite to discharge

from outfall serial numbers 001A, 002A, 003A and 004A in accordance with effluent limitations, monitoring requirements, reporting requirements and other conditions. The Permit requires Colorite to comply with all conditions of the permit.

Resource Conservation and Recovery Act

30. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901, *et seq.*

31. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Part 260 through 272 applicable to hazardous waste generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or equivalent "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat and dispose of hazardous waste.

32. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer a state hazardous waste program in lieu of the federal program when it deems the state program to be equivalent to the federal program.

33. EPA granted final authorization to the State of New Jersey to administer its hazardous waste program in lieu of the federal program.

34. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved New Jersey hazardous waste program, as well as the federal regulations that remain effective in New Jersey, by filing a

civil action in United States District Court seeking civil penalties not to exceed specified amounts for each day of each violation and injunctive relief.

Toxic Substances Control Act

35. Under Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and regulations promulgated thereunder, Colorite is required to follow procedures established by EPA that address the manufacturing, processing, distribution in commerce, use, and disposal of Polychlorinated Biphenyls ("PCBs").

Emergency Planning and Community Right-to-Know Act

36. Under Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder, Colorite is required annually to calculate and report to EPA various data regarding releases and off-site transfers of toxic chemicals from the Facility during the preceding year. Such data must include the "annual quantity of the toxic chemical entering each environmental medium."

37. Vinyl acetate is a hazardous substance for which the reportable quantity is 5,000 pounds.

38. Colorite is required to report, pursuant to Section 313 of EPCRA, regarding vinyl acetate at the Facility.

FACTS

39. The Facility manufactures PVC, a plastic material used in many applications from flexible sheeting to rigid water pipes. The plant uses both dispersion and suspension processes, in which vinyl chloride, vinyl acetate and other ingredients are combined in towers and pressure vessels called reactors.

40. Polymerization takes place in these towers and reactors, a process in which the molecules of vinyl are linked together to form long chains. These polymer chains form the plastic PVC resin, which Colorite sells as its product.

41. The PVC resin goes through a stripping process used to recover unreacted vinyl chloride and/or vinyl acetate monomer. The PVC resin is dried and then bagged for sale. Any monomer not recovered during the stripping process is released to the atmosphere during drying.

42. The manufacturing process also creates several streams of liquid wastes.

43. Off-spec product and other scrap PVC solids are accumulated at various locations throughout the Facility.

44. On September 14 - 22, 2004, a team of EPA inspectors and engineers from the National Enforcement Investigation Center ("NEIC") conducted a week-long inspection of the Facility. During this inspection, the team discovered evidence of a number of violations of the above environmental statutes and regulations.

FIRST CLAIM FOR RELIEF
(Section 113(b) of the CAA)

45. Paragraphs 1 through 44 are incorporated herein by reference.

46. Colorite has committed the following violations of the Clean Air Act and the regulations and permits enforced thereunder:

a. On at least twenty-three occasions since January 1, 2001, Colorite violated the daily average reactor opening loss ("ROL") emission standard imposed by 40 C.F.R. § 61.64(a)(2) by emitting in one calendar day an average of more than 0.02 grams of vinyl chloride per kilogram of PVC product determined on a dry solids basis.

b. On at least twenty-seven occasions since January 1, 2001, Colorite violated the daily weighted average emission standard imposed by 40 C.F.R. § 61.64(e)(1)(ii) by allowing the weighted average residual vinyl chloride monomer ("RVCM") concentration in all grades of PVC resin processed through an individual stripping operation to exceed 400 parts per million ("ppm") in one calendar day.

c. On at least twelve occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.64(d) by emitting incinerator exhaust gas with a vinyl chloride concentration in excess of 10 ppm, calculated on a 3-hour rolling average.

d. On at least four occasions since January 29, 2003, Colorite violated 40 C.F.R. § 61.64(a)(3) by allowing non-emergency vinyl chloride discharges from manual vent valves, resulting in the release of a total of more than 1,500 lbs. of vinyl chloride.

e. On a continuous basis since January 1, 2001, Colorite violated 40 C.F.R. § 61.65(b)(3)(iv) by failing to install adequate double outboard seals or their equivalent on all reciprocating compressors in vinyl chloride service, thus allowing vinyl chloride concentrations in compressor exhaust to reach between 3,200 to 5,000 ppm, far in excess of the 10 ppm emission limit.

f. On at least 129 occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.65(b)(9)(i) by failing to reduce the vinyl chloride concentration of in-process wastewater streams to no more than 10 ppm by weight.

g. On at least four occasions since March 5, 2001, Colorite violated 40 C.F.R. § 61.65(b)(8)(i)(D)(2) by using expired calibration gas cylinders as part of its vinyl chloride Leak Detection and Elimination (LDE) program.

h. On a continuous basis since January 1, 2001, Colorite violated 40 C.F.R. § 61.65(b)(8)(i) by failing to conduct routine leak detection using portable hydrocarbon detectors as required by its LDE program.

i. During the twenty-four month period between March 2002 and February 2004, on at least 302 occasions, Defendant violated 40 C.F.R. § 61.65(b)(8)(i)(D) and (ii), and the Facility's LDE program, by failing to perform weekly calibrations of each of its three portable hydrocarbon detectors.

j. On at least fifteen occasions since December 1, 2001, Colorite violated 40 C.F.R. §§ 61.65(b)(8)(ii) and 61.245(b)(3) by failing to conduct daily calibrations of portable hydrocarbon detectors during each of three five-day annual performance tests.

k. On a continuous basis between January 1, 2001 and December 31, 2004, Colorite violated 40 C.F.R. § 61.65(b)(8)(ii) by failing to perform random tests of volatile organic compound ("VOC") service valves as part of its annual performance testing protocol.

l. On a continuous basis since January 1, 2001, Colorite violated 40 C.F.R. § 61.65(b)(8)(ii) by failing to monitor leaks as close to the leak interface as possible, as required by 40 C.F.R. § 61.245(b).

m. On at least 68 occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.67(g)(5)(i)(A) by failing to sample ROL near the reactor vessel tops and six inches from the reactor vessel bottoms.

n. On a continuous basis since January 1, 2001, Colorite violated 40 C.F.R. §§ 61.64(a)(2) and 61.64(e)(1)(i) by failing to sample ROL after each stripping operation and failing to sample the RVCM concentration in all resins processed through the stripping operation

on each calendar day.

o. On at least 266 occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.67(g)(3) by failing to record, pursuant to EPA-approved sampling methods, the correct time that dispersion and suspension samples were taken.

p. On at least 434 occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.67(g)(3) by failing to analyze suspension and dispersion samples within twenty-four hours.

q. On an ongoing basis since January 1, 2001, Colorite violated 40 C.F.R. § 61.67(g)(3) by failing to refrigerate samples as required by EPA-approved sampling methods.

r. On an ongoing basis since January 1, 2001, Colorite violated 40 C.F.R. § 61.67(g)(3) by failing to generate a four-point gas standard calibration curve for calibration of gas chromatography, as required by EPA-approved sampling methods.

s. On at least fourteen occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.70(c)(3) by failing to report ROL exceedences in its quarterly reports.

t. On at least fourteen occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.70(c)(2)(v) by failing to include RVCM concentrations above 400 ppm in PVC resins in its quarterly reports.

u. On at least fourteen occasions since January 1, 2001, Colorite violated 40 C.F.R. § 61.70(c)(1) by failing to report exhaust gas stream vinyl chloride concentration limit exceedences in its quarterly reports.

SECOND CLAIM FOR RELIEF
(Section 309 (d) of CWA)

47. Paragraphs 1 through 46 are incorporated herein by reference.

48. Colorite has committed the following violations of the Clean Water Act and the regulations and permits enforced thereunder:

a. On a continuous basis since January 1, 2001, Colorite violated 40 C.F.R. § 112.7(a) by failing to include in the Facility's Spill Prevention, Control and Countermeasure Plan ("SPCC Plan") nineteen fifty-five-gallon drums of specialty lubricants located in the lube oil storage area of the Facility maintenance shop.

b. On a continuous basis since January 1, 2001, Colorite violated 40 C.F.R. § 112.7(a) by failing to include in the Facility's SPCC Plan several fifty-five-gallon drums of "Foamaster AP" oil-based defoamer located in the Copolymer building of the Facility suspension plant.

c. On a continuous basis since January 1, 2001, Colorite violated 40 C.F.R. § 112.7(e)(8) by failing to include in the Facility's SPCC plan written procedures for inspections, and failing to record inspections, of a 1,500 gallon diesel fuel tank, identified as "tank C" in the Facility plan.

d. On at least ten occasions since March 1, 2002, Colorite exceeded the 30-day average Biochemical Oxygen Demand ("BOD") discharge allowance authorized by Colorite's NJPDES Permit.

e. On at least seven occasions since February 1, 2003, Colorite violated its NJPDES permit by exceeding the daily maximum BOD discharge allowance authorized by the

permit.

f. On at least two occasions since June 1, 2004, Colorite violated its NJPDES permit by not satisfying the 30-day average BOD percent removal requirements of the permit.

g. On at least fifteen occasions since June 1, 2002, Colorite violated its NJPDES permit by exceeding the 30-day average Total Dissolved Solids ("TDS") discharge allowance authorized by the permit.

h. On at least one occasion since November 1, 2004, Colorite violated its NJPDES permit by exceeding the daily maximum TDS discharge allowance authorized by the permit.

i. On at least one occasion since December 1, 2003, Colorite violated its NJPDES permit by exceeding the 30-day average Vinyl Chloride discharge allowance authorized by the permit.

j. On at least two occasions since June 1, 2005, Colorite violated its NJPDES permit by exceeding the 30-day average fecal coliform discharge allowance authorized by the permit.

k. On at least two occasions since June 1, 2005, Colorite violated its NJPDES permit by exceeding the daily maximum fecal coliform discharge allowance authorized by the permit.

l. On at least one occasion since August 1, 2004, Colorite violated its NJPDES permit by exceeding the maximum daily temperature allowance of discharge water authorized by the permit.

m. On at least one occasion since June 1, 2004, Colorite violated its NJPDES permit by failing to sample for pH as required by the permit.

n. On at least seven occasions since August 1, 2002, Colorite violated its NJPDES permit by failing to submit Discharge Monitoring Reports ("DMRs") as required by the permit.

THIRD CLAIM FOR RELIEF
(Sections 3008(a)(1) and 3008(g) of RCRA)

49. Paragraphs 1 through 48 are incorporated herein by reference.

50. Colorite has committed the following violations of the Resource Conservation and Recovery Act and the New Jersey hazardous waste management regulations that are federally enforceable pursuant to 42 U.S.C. § 6928:

a. On one or more occasions since January 1, 2001, Colorite violated 40 C.F.R. § 262.11 (1993)(N.J.A.C. 7:26G-6.1(a)) by failing to make hazardous waste determinations for solid waste streams, including bead blasting residue, welding rods, and residues left in equipment removed from service.

b. On a continuing basis since January 1, 2001, Colorite violated Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c)(1993)(N.J.A.C. 7:26G-12.1(a)) by storing PVC solids in four modified hoppers for up to eight hours per day without a permit. Colorite was not exempt from permit requirements under 40 C.F.R. § 262.34 (1993)(N.J.A.C. 7:26G-6.1(a)) because Colorite failed to: (i) name a primary emergency coordinator in its contingency plan as required by 40 C.F.R. § 265.52(d) (1993)(N.J.A.C. 7:26G-9.1(a)); (ii) amend its contingency plan as required by 40 C.F.R. § 265.54(d) (1993)(N.J.A.C. 7:26G-9.1(a)); (iii)

keep the hoppers closed as required by 40 C.F.R. § 262.34(c)(1)(i) (1993)(N.J.A.C. 7:26G-6.1(a)); and (iv) label the hoppers as containing “hazardous waste” as required by 40 C.F.R. § 262.34(c)(1)(ii) (1993)(N.J.A.C. 7:26G-6.1(a)).

c. On a continuing basis since January 1, 2001, Colorite violated 40 C.F.R. § 262.34(a)(4) (1993)(N.J.A.C. 7:26G-6.1(a)) and 40 C.F.R. § 265.34 (1993)(N.J.A.C. 7:26G-9.1(a)) by failing to provide personnel handling hazardous waste in the Facility’s central 90-day hazardous waste accumulation area with immediate access to an internal alarm or emergency communication device.

d. On at least six occasions since January 1, 2003, Colorite violated N.J.A.C. 7:26G-6.2(a) by failing to enter into Section I (“Waste No.”) of applicable Hazardous Waste Manifests the “F003” waste code to describe shipments of waste acetone / mineral spirits (spent laboratory solvents).

FOURTH CLAIM OF RELIEF
(Section 17 of TSCA)

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. Colorite has committed the following violations of the Toxic Substances Control Act and the regulations and permits enforced thereunder:

a. On at least nine occasions since January 1, 2001, Colorite violated 40 C.F.R. § 761.60(a) by disposing of PCBs without authorization.

b. Colorite violated 40 C.F.R. § 761.30(a)(1)(x) by failing to contain active leaks on transformers US6 and/or US11, failing to visually inspect and verify these leaks on a daily basis for over 200 days between January 13 and September 1, 2004, and failing to repair or

replace these leaking transformers.

c. On at least one occasion since January 1, 2001, Colorite violated 40 C.F.R. § 761.207(a) by failing to manifest PCB waste.

d. On one or more occasions since January 1, 2001, Colorite violated 40 C.F.R. §§ 761.20(a) and 761.30(a)(1)(vi) by using PCBs without authorization.

FIFTH CLAIM OF RELIEF
(Section 313 of EPCRA)

53. Paragraphs 1 through 52 are incorporated herein by reference.

54. On at least one occasion since January 1, 2002, Colorite violated the Emergency Planning and Community Right to Know Act and 40 C.F.R. § 372.30(a) by failing to report in its Form R the transfer to an off-site location of 5,000 pounds of vinyl acetate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court grant the following relief:

1. Permanently enjoin Colorite from further violations of the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*, and the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, *et seq.*, and their implementing permits and regulations.

2. Order Colorite to promptly take all steps necessary or appropriate to comply with the foregoing laws, regulations and permits.

3. A judgment assessing civil penalties against Colorite not to exceed \$27,500 per

day for each violation in which the District Court is authorized to assess civil penalties that occurred prior to March 15, 2004, and not to exceed \$32,500 per day for each violation in which the District Court is authorized to assess civil penalties that occurred on or after March 15, 2004.

4. Award such other relief as this Court may deem just and proper.

Respectfully submitted,

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

PATRICIA A. MCKENNA
Senior Attorney
SCOTT BAUER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044
(202) 514-4133

OF COUNSEL:

MARY C. MCHALE
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866
(212) 637-3219